

RESPONDENT.

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) **CASE NO. QWE-T-03-25**
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) **ORDER NO. 29687**
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PAGEDATA'S COMPLAINT

In its Complaint, PageData alleged first that Qwest has misbilled PageData under the adopted Arch Agreement, and second that Qwest has refused to correct the billing. PageData requested that the Commission direct Qwest to correct the billing on Account BAN208R51-0454-454. In addition, PageData sought an Order from this Commission to require Qwest to remit cash payments to PageData for reciprocal compensation or, at a minimum, to issue credits for the reciprocal compensation to specific accounts designated by PageData.

Under the adopted Arch Agreement, PageData asserted it is “in a unique position [because] Qwest owes PageData more money per month than PageData owes Qwest” as a result of reciprocal compensation. Complaint at 2. PageData maintained Qwest has refused to issue cash payments for reciprocal compensation “because of prior disputed accounts.” *Id.* at 3.¹ PageData alleged Qwest’s failure to make reciprocal compensation payments or provide credits violates Section 12.3 of the parties’ Interconnection Agreement. Section 12.3 allows either party to dispute any portion of the monthly billing and both parties agree to expedite investigation of any dispute. This section also provides that either party may withhold “up to four months worth of disputed charges not to exceed \$100,000 in the aggregate.” *Id.*

PageData argued Qwest should not be allowed to violate the terms of the approved Interconnection Agreement by mixing current interconnection disputes with “past disputes that are before authoritative bodies that have jurisdiction to settle those disputes....” Complaint at 7. PageData insisted the terms of its Interconnection Agreement should control regardless of past disputes with Qwest.

PageData stated it filed its formal complaint pursuant to the federal Telecommunications Act of 1996 and Section 13.14 (Dispute Resolution) of its Interconnection Agreement. Section 13.14 of the Interconnection Agreement addresses disputes. This section provides in pertinent part:

If any claim, controversy or dispute between the Parties, their agents, employees, officers, directors, or affiliated agents (“Dispute”) cannot be settled through negotiation, it shall be resolved by arbitration under the then current rules of the American Arbitration Association (“AAA”). The arbitration shall be conducted by a single neutral arbitrator familiar with the

¹ PageData and Qwest are opposing parties in Idaho Supreme Court Appeal No. 29175. The appeal concerns billing disputes that arose before the parties entered into their first Interconnection Agreement.

telecommunications industry and engaged in the practice of law. ...The Federal Arbitration Act, 9 U.S.C. Secs. 1-16, not state law, shall govern the arbitrability of all Disputes. The arbitrator shall not have authority to award punitive damages. All expedited procedures prescribed by the AAA rules shall apply and the rules used shall be those for the telecommunications industry. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. The prevailing Party, as determined by the arbitrator, shall be entitled to an award of reasonable attorneys' fees and costs. The arbitration shall occur at a mutually agreed upon location. Nothing in this Section shall be construed to waive or limit either Party's right to seek relief from the [Idaho] Commission or the FCC as provided by state or federal law.

Adopted Qwest-PageData Interconnection Agreement, § 13.14 (emphasis added).

QWEST'S RESPONSE

In its "limited" response to PageData's Complaint, Qwest asserted the Commission should decline to docket a complaint proceeding and "should dismiss PageData's Filing." Qwest Response at 2. Qwest specifically stated that its limited response does not constitute an "Answer" under the Commission's procedural Rule 57, IDAPA 31.01.01.057. Qwest maintained that the parties' Interconnection Agreement sets out detailed procedures for resolving disputes "but PageData has entirely ignored that contractual obligation." *Id.* at 2. Because the substance of PageData's Complaint is a contract dispute under their Interconnection Agreement, Qwest urged the Commission to decline jurisdiction and instead direct the parties to utilize the dispute resolution provisions of their Agreement.

Qwest further asserted that the procedures for addressing PageData's Complaint are addressed by Section 13.14 (set out above) of the parties' Interconnection Agreement. Given that the subject matter of PageData's Complaint arises under their adopted and Commission-approved Interconnection Agreement, Qwest insisted PageData is contractually bound to follow the dispute resolution procedures called out in the Agreement.

Qwest next asserted there is no federal or state law clearly granting the Commission jurisdiction over disputes arising from an Interconnection Agreement. The Company maintained that generally the construction and enforcement of contract rights in Idaho is a matter that lies in the jurisdiction of the courts and not this Commission. *Bunker Hill Company v. Washington Water Power Company*, 101 Idaho 493, 616 P.2d 272 (1980). Thus, Qwest questioned whether the Commission is the proper forum to address PageData's contract Complaint.

Finally, Qwest asserted that Idaho law strongly favors the enforcement of contractual arbitration clauses. As set out above, Section 13.14 provides that unresolved disputes between the parties shall be resolved by arbitration. Qwest noted arbitration is a favored remedy for disputes. *International Assoc. of Firefighters, Local No. 672 v. City of Boise*, 136 Idaho 162, 30 P.3d 940 (2001). For these reasons, Qwest urged the Commission to dismiss the complaint and not initiate a complaint proceeding.

PAGEDATA'S REPLY

In its Reply, PageData urged the Commission to reject Qwest's assertion that the Commission has no jurisdiction over this complaint. The Pager insisted the Commission has jurisdiction to resolve disputes concerning interconnection agreements. More specifically, PageData asserted that *Idaho Code* §§ 62-614 and 62-615(1) provides the Commission with the requisite statutory authority to investigate and resolve this dispute. PageData relied on the Commission's Order No. 29219 in the *ITA/Illuminet v. Qwest* case (No. QWE-T-02-11) for support. In that case, the Commission noted that *Idaho Code* § 62-615(1) gives the Commission "full power and authority to implement the federal telecommunications act of 1996." PageData Reply at 326 quoting Order No. 29219 at n.1. In addition, the Pager maintained that *Idaho Code* § 62-614² provides broad authority to the Commission so that it may "resolve disputes between incumbent telephone companies, like Qwest, and other telephone service providers." *Id.*, quoting Order No. 29219 at 4. Consequently, PageData believes that the Commission has jurisdiction to entertain PageData's Complaint.

PageData also asserted that the Commission "is responsible for enforcing the pricing schedules and reciprocal compensation terms on interconnection agreements that [the Commission] approved (*Idaho Code* § 62-614)." PageData Reply at 9. PageData insisted the Commission "is compelled by Idaho statute to investigate all commercially filed formal complaints and enforce all provisions of interconnection agreements that are filed within the state of Idaho...." *Id.*

² *Idaho Code* § 62-614(1) states:

If a telephone corporation providing basic local exchange service which has exercised the election provided in section 62-604(2)(a), *Idaho Code*, and any other telephone corporation subject to title 61, *Idaho Code*, or any mutual, nonprofit or cooperative telephone corporation, are unable to agree on any matter relating to telecommunication issues between such companies, then either telephone corporation may apply to the commission for determination of the matter.

PageData explained that Section 13.14 of the Interconnection Agreement provides for three methods of dispute resolution. “Qwest has the ability to take PageData to arbitration; file a complaint at the [Idaho] Commission where the services are being provided; or file a complaint at the FCC in order that Qwest may request an order to demand payment or disconnect services.” *Id.* at 16. Instead of pursuing one of these three methods of dispute resolution, Qwest took unilateral action by withholding reciprocal compensation. Consequently, PageData stated that Qwest’s conduct leaves the decision on which dispute resolution alternative to utilize “to PageData alone.” *Id.* at 1. After PageData filed this complaint, Qwest should now be prohibited from dictating a different course of dispute resolution. *Id.* at 19.

THE REQUEST FOR SUMMARY JUDGMENT

In January 2004 PageData filed a “Request for Summary Judgment.” In its Request, PageData stated that Qwest is correcting the disputed invoices in this matter but is “still not agreeing to remit payment for reciprocal compensation due PageData.” PageData Summary Judgment at 2. PageData insisted that its entitlement to reciprocal compensation under the Interconnection Agreement more than offsets the charges billed by Qwest.

DISCUSSION AND FINDINGS

After having reviewed the pleadings in this case, we decline PageData’s invitation to resolve its Interconnection Agreement dispute with Qwest. It is undisputed that both Qwest and PageData voluntarily agreed to adopt the Qwest-Arch Paging Interconnection Agreement pursuant to 47 U.S.C. § 252(i). Section 13.14 of the Interconnection Agreement contains an arbitration provision for the resolution of disputes between the parties. The Commission approved PageData’s Interconnection Agreement with Qwest in Order No. 29198. A review of the arbitration provision is instructive.

Section 13.14 provides that any dispute between parties “shall be resolved by arbitration.” (Emphasis added.) This section states that the arbitration will be conducted under the rules of the American Arbitration Association (AAA) and the arbitrator’s decision “shall be final and binding.” The parties also agreed to utilize all “expedited procedures prescribed by the AAA rules” and the prevailing party “shall be entitled to an award of reasonable attorneys’ fees and cost.” Simply put, the Interconnection Agreement contains detailed procedures for utilizing the AAA arbitration rules to resolve disputes.

Based upon our review of Section 13.14, we find that the parties clearly contemplated utilizing arbitration when they cannot resolve their dispute informally. Our Supreme Court has recognized that there is a strong public policy in favor of arbitration and that arbitration “is a favored remedy” for resolving disputes. *International Assoc. of Firefighters, Local 672 v. City of Boise*, 136 Idaho 162, 168, 30 P.3d 940, 946 (2001). The Supreme Court recognizes that the:

essential nature of arbitration is that the parties, by consensual agreement, have decided to substitute the final and binding judgment of an impartial entity conversant with the [telecommunications and] business world for the judgment of the courts. They seek to avoid the cost, in both time and money, of formal judicial dispute resolution.

Driver v. SI Corporation, 139 Idaho 423, 426, 80 P.3d 1024, 1027 (2003) quoting *Hecla Mining Co. v. Bunker Hill Co.*, 101 Idaho 557, 562, 617 P.2d 861, 866 (1980). Here the parties agreed to include an arbitration clause in their contract. Although section 13.14 does not limit the parties right to seek relief from this Commission, the arbitration process is the first and foremost method for resolving disputes under the Interconnection Agreement.

We further find PageData’s reliance on *Idaho Code* § 62-614 is misplaced. This statute authorizes the Commission to resolve disputes between a Title 61 local exchange company (LEC) and a telephone corporation that has elected to remove its non-local services from regulation under Title 61 (i.e., Qwest). However, PageData is not a Title 61 LEC providing local exchange service. Under Idaho law, telephone corporations providing radio paging services “are exempt from any requirements of title 61, or chapter 6, title 62, Idaho Code.” *Idaho Code* § 61-121. See also *Idaho Code* §§ 62-603 (13) and (14).


Even though the Commission declines jurisdiction in this case, PageData is not without a remedy. As PageData recognized, it may submit this dispute to arbitration or the FCC under Section 13.14. Consequently, we decline PageData’s request to resolve its reciprocal compensation complaint against Qwest.

O R D E R

IT IS HEREBY ORDERED that the Commission declines to accept jurisdiction to resolve PageData’s Complaint regarding reciprocal compensation. Consequently, we dismiss PageData’s Complaint without prejudice.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. QWE-T-03-25 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this Case No. QWE-T-03-25. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

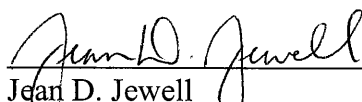
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 19th day of January 2005.


PAUL KJELLANDER, PRESIDENT


MARSHA H. SMITH, COMMISSIONER


DENNIS S. HANSEN, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

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